

SB0157S01 compared with SB0157

~~{deleted text}~~ shows text that was in SB0157 but was deleted in SB0157S01.

inserted text shows text that was not in SB0157 but was inserted into SB0157S01.

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Senator Daniel W. Thatcher proposes the following substitute bill:

PAWNSHOP AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: ~~{_____}~~ V. Lowry Snow

LONG TITLE

General Description:

This bill modifies ~~{provisions of the Pawnshop and Secondhand Merchandise Transaction Information Act regarding claims to property and provisions regarding the membership of the Secondhand Merchandise Advisory Board}~~ Title 13, Commerce and Trade, regarding pawn and secondhand businesses.

Highlighted Provisions:

This bill:

- ▶ ~~{provides that when pawned property that is held as evidence is no longer needed, and the case is resolved by a plea or guilty verdict, the property shall be returned to the original victim and no costs may be imposed;~~
- ▶ ~~provides that if the seized property is valued at less than \$500 and is not necessary for the prosecution, or if the hold period expires, the property shall be returned to~~

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- ~~the original victim;~~
- ~~provides that if the property is valued at \$500 or more and is not necessary for the prosecution, or if the hold period expires,}~~ defines a retail media item and provides that these items are not subject to secondhand business provisions;
- ▶ modifies provisions regarding the disposition of property, including:
 - notice from law enforcement to the pawn or secondhand business ~~{ shall transfer}~~; and
 - the ~~{ article}~~ return of an item to the original victim ~~{ within 15 days;~~
- ~~allows the}~~ after it has been held or seized;
- ▶ modifies the procedure for the disposition of an item no longer needed for investigation or prosecution, including the procedure for pawn or secondhand ~~{ business to request a hearing}~~ businesses to contest the ~~{ court finding that the property is to be returned to the original victim;~~
- ~~modifies the terms of membership and board functions}~~ disposition; and
- ▶ modifies provisions regarding the Secondhand Merchandise Advisory Board ~~{, and~~
- ~~provides an exemption to the 15-day holding period regarding retail media items if the items do not contain any identifiable marks that appear to have been intentionally defaced}~~, including recommendations and appointment of members.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 13-32a-102, as last amended by Laws of Utah 2013, Chapters 124 and 187
- ~~{~~ ~~13-32a-102.5, as last amended by Laws of Utah 2012, Chapter 284~~
- ~~}~~ 13-32a-109, as last amended by Laws of Utah 2013, Chapter 124
- 13-32a-109.5, as last amended by Laws of Utah 2012, Chapter 284
- 13-32a-112, as last amended by Laws of Utah 2012, Chapter 284
- 13-32a-115, as last amended by Laws of Utah 2014, Chapters 144 and 189
- 13-32a-116, as enacted by Laws of Utah 2012, Chapter 284

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ENACTS:

~~{13-32a-112}~~ 13-32a-116, ~~{3}~~ 5, Utah Code Annotated 1953

~~{REPEALS AND REENACTS:~~

~~———— 13-32a-117, as last amended by Laws of Utah 2014, Chapter 189~~

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-32a-102** is amended to read:

13-32a-102. Definitions.

As used in this chapter:

(1) "Account" means the Pawnbroker and Secondhand Merchandise Operations

Restricted Account created in Section 13-32a-113.

(2) "Antique item" means an item:

(a) that is generally older than 25 years;

(b) whose value is based on age, rarity, condition, craftsmanship, or collectability;

(c) that is furniture or other decorative objects produced in a previous time period, as distinguished from new items of a similar nature; and

(d) obtained from auctions, estate sales, other antique shops, and individuals.

(3) "Antique shop" means a business operating at an established location and that offers for sale antique items.

(4) "Board" means the ~~[Pawnshop and]~~ Secondhand Merchandise Advisory Board created by this chapter.

~~{ ——— (5) "Business credit transaction" means a consumer transaction with a retail business that involves a credit given to the customer toward purchases with that retail business, but does not include transferable gift cards.~~

~~{ (5) }~~ ~~{ (6) }~~ "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.

~~{ (6) }~~ ~~{ (7) }~~ "Coin" means a piece of currency, usually metallic and usually in the shape of a disc that is:

(a) stamped metal, and issued by a government as monetary currency; or

(b) (i) worth more than its current value as currency; and

(ii) worth more than its metal content value.

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~~(7)~~~~(8)~~ "Coin dealer" means a person or business whose sole business activity is the selling and purchasing of coins and precious metals.

~~(8)~~~~(9)~~ "Commercial grade precious metals" or "precious metals" means ingots, monetized bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or fabricator indicating their fineness and include:

(a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious metals; or

(b) .925 fine sterling silver ingots, art bars, and medallions.

~~(9)~~~~(10)~~ "Division" means the Division of Consumer Protection in Title 13, Chapter 1, Department of Commerce.

~~(10)~~~~(11)~~ "Identification" means a valid [U.S.] United States federal or state-issued photo [H] personal identification, including a [U.S.] United States passport, a [U.S.] United States passport card, ~~(a)~~~~(a)~~ U.S. ~~(United States)~~ military [H] personal identification, and a driver license.

~~(11)~~~~(12)~~ "Local law enforcement agency" means the law enforcement agency that has direct responsibility for ensuring compliance with central database reporting requirements for the jurisdiction where the pawnshop or secondhand business is located.

~~(12)~~~~(13)~~ "Misappropriated" means stolen, embezzled, converted, obtained by theft, or otherwise appropriated without authority of the lawful owner.

~~(13)~~~~(14)~~ "Original victim" means a victim who is not a party to the pawn or sale transaction and includes:

(a) an authorized representative designated in writing by the original victim; and

(b) an insurer who has indemnified the original victim for the loss of the described property.

~~(14)~~~~(15)~~ "Pawnbroker" means a person whose business engages in the following activities:

(a) loans money on one or more deposits of personal property;

(b) deals in the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledgor or depositor;

(c) loans or advances money on personal property by taking chattel mortgage security on the property and takes or receives the personal property into his possession, and who sells

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the unredeemed pledges;

(d) deals in the purchase, exchange, or sale of used or secondhand merchandise or personal property; or

(e) engages in a licensed business enterprise as a pawnshop.

~~(15)~~~~(16)~~ "Pawn and secondhand business" means any business operated by a pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

~~(18)~~ ~~(17)~~16 "Pawnshop" means the physical location or premises where a pawnbroker conducts business.

~~(16)~~ ~~(18)~~17 "Pawn ticket" means a document upon which information regarding a pawn transaction is entered when the pawn transaction is made.

~~(17)~~ ~~(19)~~18 "Pawn transaction" means an extension of credit in which an individual delivers property to a pawnbroker for an advance of money and retains the right to redeem the property for the redemption price within a fixed period of time.

~~(19)~~~~(20)~~ "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

~~(20)~~~~(21)~~ "Property" means any tangible personal property.

~~(21)~~~~(22)~~ "Register" means the record of information required under this chapter to be maintained by pawn and secondhand businesses. The register is an electronic record that is in a format that is compatible with the central database.

~~(23)~~22 "Retail media item" means recorded music, a movie, or a video game that is produced and distributed in hard copy format for retail sale.

~~(22)~~ ~~(24)~~23 "Scrap jewelry" means any item purchased solely:

- (a) for its gold, silver, or platinum content; and
- (b) for the purpose of reuse of the metal content.

~~(23)~~ ~~(25)~~24 (a) "Secondhand merchandise dealer" means an owner or operator of a business that:

(i) deals in the purchase, exchange, or sale of used or secondhand merchandise or personal property; and

(ii) does not function as a pawnbroker.

(b) "Secondhand merchandise dealer" does not include:

(i) the owner or operator of an antique shop;

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- (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;
- (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel, and outboard motor dealers as defined in Section 41-1a-102;
- (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard sales," or "estate sales";
- (v) the sale or receipt of secondhand books, magazines, or post cards;
- (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious, or charitable organizations or any school-sponsored association, and for which no compensation is paid;
- (vii) the sale or receipt of secondhand clothing and shoes;
- (viii) any person offering his own personal property for sale, purchase, consignment, or trade via the Internet;
- (ix) any person or entity offering the personal property of others for sale, purchase, consignment, or trade via the Internet, when that person or entity does not have, and is not required to have, a local business or occupational license or other authorization for this activity;
- (x) any owner or operator of a retail business that:
 - (A) receives used merchandise as a trade-in for similar new merchandise; or
 - (B) receives used retail media items as a trade-in for similar new or used retail media items;
- (xi) an owner or operator of a business that contracts with other persons or entities to offer those persons' secondhand goods for sale, purchase, consignment, or trade via the Internet;
- (xii) any dealer as defined in Section 76-6-1402, which concerns scrap metal and secondary metals; or
- (xiii) the purchase of items in bulk that are:
 - (A) sold at wholesale in bulk packaging;
 - (B) sold by a person licensed to conduct business in Utah; and
 - (C) regularly sold in bulk quantities as a recognized form of sale.

Section 2. Section ~~{13-32a-102.5}~~ 13-32a-109 is amended to read:

~~{~~ 13-32a-102.5. Administration and enforcement.

~~—— (1) The division shall administer and enforce this chapter in accordance with the~~

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~~authority under Title 13, Chapter 2, Division of Consumer Protection:~~

~~— (2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of its responsibilities under this chapter.~~

~~— (3) Reasonable attorney fees, costs, and interest shall be awarded to the division in any action brought to enforce the provisions of this chapter.~~

~~— (4) Municipal and county law enforcement agencies, prosecutorial agencies, and governmental agencies may enforce the criminal and civil provisions of this chapter, except as provided under Section 13-32a-117.~~

~~— Section 3. Section 13-32a-109 is amended to read:~~

‡ **13-32a-109. Holding period for articles -- Return of articles -- Penalty.**

(1) (a) A pawnbroker may sell an article pawned to the pawnbroker if:

(i) 15 days have passed since the day on which the contract between the pawnbroker and the pledgor was executed;

(ii) the contract period between the pawnbroker and the pledgor has expired; and

(iii) the pawnbroker has complied with the requirements of Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103.

(b) If an article, including scrap jewelry, is purchased by a pawn or secondhand business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article after the pawn or secondhand business or coin dealer has held the article for 15 days and complied with the requirements of Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are not required to hold ~~{an article as described}~~ precious metals or coins under this Subsection (1)~~(c)~~.

~~— (c) A pawn, secondhand, or coin dealer business is not required to hold an article:~~

~~— (i) that consists of precious metals or coins under this Subsection (1)(b); (c); or~~

~~— (ii) that is a retail media item that is the subject of a business credit transaction and that does not include any retail media item that has a serial number or one or more identifying numerals, letters, or marks that appear to be intentionally defaced.~~

~~— [(c)] (d) b.~~

(c) This Subsection (1) does not preclude a law enforcement agency from requiring a pawn or secondhand business to hold an article if necessary in the course of an investigation.

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(i) If the article was pawned, the law enforcement agency may require the article be held beyond the terms of the contract between the pledgor and the pawn broker.

(ii) If the article was sold to the pawn or secondhand business, the law enforcement agency may require the article be held if the pawn or secondhand business has not sold the article.

~~ff~~(d)~~ff~~(e) If the law enforcement agency requesting a hold on property under this Subsection (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify the local law enforcement agency of the request and ~~shall~~ also ~~notify~~ the pawn or secondhand business.

(2) If a law enforcement agency requires the pawn or secondhand business to hold an article as part of an investigation, the agency shall provide to the pawn or secondhand business a hold ticket issued by the agency, which:

- (a) states the active case number;
- (b) confirms the date of the hold request and the article to be held; and
- (c) facilitates the ability of the pawn or secondhand business to track the article when the prosecution takes over the case.

(3) If an article is not seized by a law enforcement agency that has placed a hold on the property, the property shall remain in the custody of the pawn or secondhand business until further disposition by the law enforcement agency, and as consistent with this chapter.

(4) The initial hold by a law enforcement agency is for a period of 90 days. If the article is not seized by the law enforcement agency, the article shall remain in the custody of the pawn or secondhand business and is subject to the hold unless exigent circumstances require the purchased or pawned article to be seized by the law enforcement agency.

(5) (a) A law enforcement agency may extend any hold for up to an additional 90 days when exigent circumstances require the extension.

(b) When there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawn or secondhand business that is subject to the hold prior to the expiration of the initial 90 days.

(c) A law enforcement agency may not hold an item for more than the 180 days allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

(6) A hold on an article under Subsection (2) takes precedence over any request to

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claim or purchase the article subject to the hold.

(7) When the purpose for the hold on or seizure of an article for which an original victim who has complied with Section 13-32a-115 has not been identified is terminated ~~{ by commencement of a criminal action for which possession of the article as evidence at trial is not necessary, or the hold period for the article has expired without commencement of a criminal action }~~, the law enforcement agency requiring the hold or seizure shall within 15 days after the termination:

(a) notify the pawn or secondhand business in writing that the hold or seizure has been terminated;

(b) return the article subject to the seizure to the pawn or secondhand business ~~{ if the article was seized }~~; or

(c) if the article ~~{ }~~ is not returned to the pawn or secondhand business, ~~{ } was the subject of a pawn or sale transaction valued at less than \$500, the law enforcement agency has identified an original victim, and the original victim has complied with Subsection 13-32a-115(1):~~

~~—— (i) the law enforcement agency shall return the article to the original victim and shall }~~ advise the pawn or secondhand business either in writing or electronically of the specific ~~{ }~~ alternative ~~{ }~~ disposition of the article ~~{, including the identification of the }~~.

(8) (a) When the purpose for the hold on or seizure of an article, for which an original victim ~~{, or~~

~~—— (ii) if } who has complied with Section 13-32a-115 has been identified is terminated, the law enforcement agency {has not seized the article, the} requiring the hold or seizure shall:~~

(i) document the original victim who has positively identified the item of property; and
(ii) provide the documented information concerning the original victim to the prosecuting agency to determine whether continued possession of the article is necessary for purposes of prosecution, as provided in Section 24-3-103.

(b) If the prosecuting agency determines that continued possession of the article is not necessary for purposes of prosecution, as provided in Section 24-3-103, the prosecuting agency shall provide a written or electronic notification to the law enforcement agency which authorizes the return of the article to an original victim who has complied with Section 13-32a-115.

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(c) (i) A law enforcement agency shall ~~issue a written or electronic letter of release~~ promptly provide notice to the pawn or secondhand business ~~identifying~~ of the authorized return of the article under this Subsection (8).

(ii) The notice shall identify the original victim, advise the pawn or secondhand business that the original victim has identified the article, and ~~directing~~ direct the pawn or secondhand business to ~~immediately~~ release the article to the original victim at no cost to the original victim.

~~(8) A pawn or secondhand business that releases any article as required under Subsection (7) may contest the release of the article as provided in Section 13-32a-117.~~

~~(9) If the article under Subsection (7) was the subject of a pawn or sale transaction valued at more than \$500, the law enforcement agency has identified an original victim, and the victim has complied with Subsection 13-32a-115(1):~~

~~(a) The law enforcement agency shall issue a written or electronic letter of release to the pawn or secondhand business identifying the original victim and directing the release of the article, or if the article was seized, the notice shall advise that the article will be returned to the original victim within 15 days ~~after receipt of the notification and at no cost to the original victim~~, except as provided under Subsection ~~(9)(8)(b)d~~.~~

~~(b)d) The pawn or secondhand business shall ~~return the article to the original owner as directed by the letter of release, unless the pawn or secondhand business contests the return of the article.~~~~

~~(c) If ~~release an article under Subsection (8)(c) unless within 15 days of receiving the notice~~ the pawn or secondhand business ~~contests the return of the article in~~ compliance ~~implies~~ with ~~the requirements of~~ Section ~~13-32a-117, the pawn or secondhand business shall continue to hold the article until disposition of the contested article is determined under Section 13-32a-117. The pawn or secondhand business shall then comply with the determination.~~~~

~~[(8)] (10) 13-32a-116.5.~~

~~[(8)] (9) If the law enforcement agency does not notify the pawn or secondhand business that a hold on an item has expired, the pawn or secondhand business shall send a letter by registered or certified mail to the law enforcement agency that ordered the hold and inform the agency that the holding period has expired. The law enforcement agency shall respond~~

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within 30 days by:

(a) confirming that the holding period has expired and that the pawn or secondhand business may manage the item as if acquired in the ordinary course of business; or

(b) providing written notice to the pawn or secondhand business that a court order has continued the period of time for which the item shall be held.

~~[(9)]~~ ~~[(11);10]~~ The written notice under Subsection ~~[(8)]~~ ~~[(10);9]~~(b) is considered provided when:

(a) personally delivered to the pawn or secondhand business with a signed receipt of delivery;

(b) delivered to the pawn or secondhand business by registered or certified mail; or

(c) delivered by any other means with the mutual assent of the law enforcement agency and the pawn or secondhand business.

~~[(10)]~~ ~~[(12);11]~~ If the law enforcement agency does not respond within 30 days under Subsection ~~[(8)]~~ ~~[(10);9]~~, the pawn or secondhand business may manage the item as if acquired in the ordinary course of business.

~~[(11)]~~ ~~[(13);12]~~ A violation of ~~{} this section~~ ~~{ Subsection (1), (3), (4), (6), or (7) by a pawnbroker or a secondhand dealer }~~ is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Section ~~{4}~~3. Section **13-32a-109.5** is amended to read:

13-32a-109.5. Seizure of property -- Notification to pawn or secondhand business.

~~[(1)]~~ If a law enforcement agency determines seizure of property pawned or sold to a pawn or secondhand business is necessary under this chapter during the course of a criminal investigation, in addition to the holding provisions under Section 13-32a-109, the law enforcement agency shall:

~~[(a)]~~ (1) notify the pawnshop of the specific item to be seized; and

~~[(b)]~~ (2) issue to the pawnshop a seizure ticket in a form approved by the division and that:

~~[(i)]~~ (a) provides the active case number related to the item to be seized;

~~[(ii)]~~ (b) provides the date of the seizure request;

~~[(iii)]~~ (c) provides the reason for the seizure;

~~[(iv)]~~ (d) describes the article to be seized;

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~~[(v)]~~ (e) states each reason the article is necessary during the course of a criminal investigation; and

~~[(vi)]~~ (f) includes any information that facilitates the pawnbroker's ability to track the article when the prosecution agency takes over the case.

~~[(2) If the purpose for the seizure of an article under this section is terminated before final disposition of the criminal case and the property is no longer needed as evidence, the law enforcement agency that required the seizure shall within 15 days after the property is no longer needed as evidence:]~~

~~[(a) notify the pawn or secondhand business in writing that the purpose for the seizure has been terminated and the property is available for return to the pawn or secondhand business; or]~~

~~[(b) return the article to the pawn or secondhand business:]~~

~~[(3) If the law enforcement agency seizing the pawned or sold property is not the local law enforcement agency, the seizing agency shall, in addition to compliance with Subsection (1):]~~

~~[(a) notify the local law enforcement agency prior to any seizure; and]~~

~~[(b) facilitate the seizure of the pawned property in cooperation with the local law enforcement agency to provide the pawnshop or secondhand business the ability to monitor the proceedings:]~~

Section ~~{5}~~4. Section **13-32a-112** is amended to read:

13-32a-112. Secondhand Merchandise Advisory Board -- Membership --

Quorum.

(1) There is created within the division the Secondhand Merchandise Advisory Board. The board consists of 13 voting members and one nonvoting member:

(a) one representative of the Utah Chiefs of Police Association;

(b) one representative of the Utah Sheriffs Association;

(c) one representative of the Statewide Association of Prosecutors;

(d) one representative of the Utah Municipal Prosecutors' Association;

(e) three representatives from the pawnshop industry~~[-];~~

~~(f) three representatives from the secondhand merchandise business industry[-, and];~~

~~(g) one representative from the coin dealer industry [- who are all appointed by the~~

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director of the Utah Commission on Criminal and Juvenile Justice and who represent three separate pawnshops, three separate secondhand merchandise dealers, and one coin dealer, each of which are owned by a separate person or entity];

~~[(f)]~~ [(h)] one law enforcement officer who is appointed by the board members under Subsections (1)(a) through ~~[(e)]~~ [(g)];

~~[(g)]~~ [(i)] one law enforcement officer whose work regularly involves pawn and secondhand businesses and who is appointed by the board members under Subsections (1)(a) through ~~[(e)]~~ [(g)]; ~~for~~ and

~~[(h)]~~ [(j)] one representative from the central database, who is nonvoting.

~~[(2)]~~ (a) The board shall ~~select one voting member as the chair of the board by a majority of the members present at the board's first meeting each year.~~

~~[(b) The chair shall preside over the board for a period of one year.]~~

~~[(c) The advisory board shall meet quarterly upon the call of the chair.]~~

~~[(d) A quorum of nine members is required for the board to take action.]~~

~~[(3) (a) The board shall conduct quarterly training sessions regarding compliance with this chapter and other applicable state laws for any person who owns or is employed by a pawn or secondhand business subject to this chapter.]~~

~~[(b) Each training session shall provide no fewer than two hours of training.]~~

~~[(4) (a) Each pawn, secondhand, and coin dealer business in operation as of January 1 shall ensure one or more persons employed by the pawn or secondhand business each participate in no fewer than two hours of compliance training within that year.]~~

~~[(b) This requirement does not limit the number of employees, directors, or officers of a pawn or secondhand business who attend the compliance training.]~~

~~[(5) The board shall monitor and keep a record of the hours of compliance training accrued by each pawn or secondhand business.]~~

~~[(6) The board shall provide each pawn or secondhand business with a certificate of compliance upon completion by an employee of the two hours of compliance training.]~~ prepare recommendations for the appointment of members under Subsections (1)(a) through (g), and Subsection (1)(j), and shall forward its recommendations to the Commission on Criminal and Juvenile Justice, which shall make the appointments.

(b) The members under Subsections (1)(e), (f), and (g) shall represent three separate

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pawnshops, three separate secondhand merchandise dealers, and one coin dealer, each of which are owned by a separate person or entity.

(c) In appointing members from the individuals recommended under Subsection (~~{4}~~).

~~— [(7) (a) Each law enforcement agency that has a pawn or secondhand business located within its jurisdiction shall ensure that at least one of its officers completes two hours of compliance training yearly.]~~

~~— [(b) Subsection (7)(a) does not limit the number of law enforcement officers who attend the compliance training.]~~

~~— [(8) The board may propose to the division administrative rules establishing:]~~

~~— [(a) pawn and secondhand business industry standards for best practices;]~~

~~— [(b) standardized property descriptions for the database created under this chapter; and]~~

~~— [(c) a roster of software programs for pawn and secondhand businesses setting out minimum basic requirements for functionality.]~~

~~— [(9) Pawn and secondhand businesses may file with the board complaints regarding law enforcement agency practices perceived to be inconsistent with this chapter. The board may refer the complaints to the Peace Officers Standards and Training Division.]~~

(2) (a) Members~~{2}~~(a), the Commission on Criminal and Juvenile Justice shall give consideration to recommendations by members of the respective occupations and professions and by their representative organizations.

(3) (a) Each member of the board shall be appointed ~~{for terms}~~to a term of ~~{two years each}~~not more than four years, and may be reappointed upon expiration of the member's term.

(b) Notwithstanding the requirements of Subsection (~~{2}~~3)(a), the ~~{governor}~~Commission on Criminal and Juvenile Justice shall, at the time of ~~{appointment}~~appointments or ~~{reappointment}~~reappointments, adjust the length of terms to ensure that the terms of board members are staggered so that ~~{no more than seven members}~~approximately half of the board ~~{are}~~is appointed every two years.

~~{(c) (i) Notwithstanding Subsection (2)(a), the term of a board member who is appointed before January 1, 2012, expires on December 31, 2016.~~

~~— [(ii) On January 2, 2017, the governor shall appoint or reappoint board members in accordance with this section.~~

~~— [(3) Each member is eligible for reappointment.~~

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~~(4) A board member shall continue in office until the expiration of the board member's term and until the board member's successor is appointed, but not more than 90 days after the expiration of the board member's term.~~

~~(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the process required under Section 13-32a-112 for that position on the board.~~

~~(6) [(2)] (4) (a) The board shall elect {a chair and vice chair on or before February 1 of each year from the board's voting membership.~~

~~(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:~~

~~(a) Section 63A-3-106;~~

~~(b) Section 63A-3-107; and~~

~~(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.~~

~~(8) (a) The } one voting member as the chair of the board by a majority of the members present at the board's first meeting each year.~~

~~(b) The chair shall preside over the board for a period of one year.~~

~~(c) The advisory board shall meet quarterly{.~~

~~(b) Meetings shall be held on } upon the call of the chair{ or any of the members.~~

~~(9) Nine members constitute a quorum at any meeting, and the action of a quorum is the action of the board.~~

~~Section 6. Section 13-32a-112.3 is enacted to read:~~

~~13-32a-112.3. Board duties -- Providing training -- Records of compliance -- Training compliance -- Rulemaking.~~

~~(1) } ;~~

~~(d) A quorum of nine members is required for the board to take action.~~

~~[(3)] (5) (a) The board shall conduct quarterly training sessions regarding compliance with this chapter and other applicable state laws for any person who owns or is employed by a pawn or secondhand business subject to this chapter.~~

~~{(b) Each training session shall provide no {less} fewer than two hours of training.~~

~~[(4)] [(2)] (6) (a) Each pawn, secondhand, and coin dealer business in operation as of~~

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January 1 shall ensure ~~{that}~~ one or more persons employed by the pawn or secondhand business each participate in no ~~{less}~~ fewer than two hours of compliance training within that year.

~~§~~(b) This requirement does not limit the number of employees, directors, or officers of a pawn or secondhand business who attend the compliance training.

~~[(5)]~~ ~~(37)~~ The board shall monitor and keep a record of the hours of compliance training accrued by each pawn or secondhand business.

~~[(6)]~~ ~~(48)~~ The board shall provide each pawn or secondhand business with a certificate of compliance upon completion by an employee of the two hours of compliance training under Subsection ~~[(24)]~~ (6).

~~[(7)]~~ ~~(59)~~ (a) Each law enforcement agency ~~[that has a pawn or secondhand business located within {the law enforcement agency's} its jurisdiction]~~ shall ensure that at least one of ~~{the law enforcement agency's} its~~ officers completes two hours of compliance training yearly.

~~§~~(b) Subsection ~~[(57)]~~ (9)(a) does not limit the number of law enforcement officers who attend the compliance training.

~~[(8)]~~ ~~(610)~~ The board may propose to the division administrative rules establishing:

~~§~~(a) pawn and secondhand business industry standards for best practices;

~~§~~(b) standardized property descriptions for the database created under this chapter;

and

~~§~~(c) a roster of software programs for pawn and secondhand businesses setting out minimum basic requirements for functionality.

~~[(9)]~~ ~~(711)~~ Pawn and secondhand businesses may file with the board complaints regarding law enforcement agency practices perceived to be inconsistent with this chapter. The board may refer the complaints to the Peace Officers Standards and Training Division.

Section ~~{7}5~~. Section **13-32a-115** is amended to read:

13-32a-115. Criminal investigation -- Prosecution -- Property disposition.

(1) If the property pawned or sold to a pawn or secondhand business is the subject of a criminal investigation and a hold has been placed on the property under Section 13-32a-109, the original victim shall do the following to establish a claim:

(a) positively identify to law enforcement the item stolen or lost;

(b) if a police report has not already been filed for the original theft or loss of property,

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file a police report, and provide for the law enforcement agency information surrounding the original theft or loss of property; and

(c) give a sworn statement under penalty of law that:

- (i) claims ownership of the property;
- (ii) references the original theft or loss; and
- (iii) identifies the perpetrator if known.

(2) The pawn or secondhand business shall retain possession of any property subject to a hold until a criminal prosecution is commenced relating to the property for which the hold was placed unless:

(a) during the course of a criminal investigation the actual physical possession by law enforcement of an article purchased or pawned is essential for the purpose of fingerprinting the property, chemical testing of the property, or if the property contains unique or sensitive personal identifying information; or

(b) an agreement between the original victim and the pawn or secondhand business to return the property is reached.

(3) (a) Upon the commencement of a criminal prosecution, any article subject to a hold for investigation under this chapter may be seized by the law enforcement agency which requested the hold.

(b) Subsequent disposition of the property shall be consistent with ~~Section 24-3-103 regarding property not needed as evidence and~~ Section 13-32a-109 or Section 13-32a-117.

~~[(c) If a conflict exists between the provisions of Section 24-3-103 regarding property not needed as evidence and this chapter, this chapter takes precedence regarding property held by pawn or secondhand businesses.]~~

(4) At all times during the course of a criminal investigation and subsequent prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or secondhand business subject to the hold unless a pawned or sold article has been seized by the law enforcement agency pursuant to Section 13-32a-109.5.

Section ~~8~~6. Section **13-32a-116** is amended to read:

13-32a-116. Property disposition -- Property subject to prosecution -- Property not used as evidence.

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~~[(1)]~~ When any property that is pawned or sold to a pawn or secondhand business is the subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the pawn or secondhand business ~~[if ~~{}~~it]~~ in compliance with Subsection 13-32a-109(8), if the prosecuting agency the prosecuting agency determines the ~~{}~~article~~{}~~ property is no longer needed as evidence pending resolution of the criminal case.

~~[(2)(a) If the property is no longer needed as evidence, the original victim and the [pawn or secondhand business from which the property was seized may choose to resolve the matter pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property is no longer needed.]~~

~~[(b) The original victim shall notify the seizing law enforcement agency and the pawn or secondhand business of any agreed upon resolution and the seizing agency shall act accordingly.]~~

~~[(3)(a) If the original victim and the pawn or secondhand business from which the property was seized do not resolve the matter within the 10 days under Subsection (2), the original victim or the pawn or secondhand business shall notify the prosecuting agency or law enforcement agency in possession of the property that the disputed claim has not been resolved.]~~

~~[(b)(i) Upon receipt of written notice from the pawn or secondhand business or the original victim that the parties are unable to resolve the disposition of the property as provided, the prosecuting agency shall submit a motion to the court to schedule a property disposition hearing within 45 days after receipt of the notice.]~~

~~[(ii) The prosecuting agency shall provide notice of the hearing to the pawn or secondhand business, the original victim, and any named defendant in the pending criminal case to the last known address or to counsel of record.]~~

~~[(iii) Notice shall be by certified mail or registered mail. Another form of notice may be used if agreed upon by the parties.]~~

~~[(c) The hearing under Subsection (3)(b) may be combined with a preliminary examination or other hearing, in the court's discretion.]~~

~~[(4) At the seized property disposition hearing the court shall take into consideration:]~~

~~[(a) the evidentiary value of the property and the need for its use at trial;]~~

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~~[(b) whether alternative evidence, such as photographs, records, or serial numbers, make retention of the property unnecessary;]~~

~~[(c) the proof of ownership of the property and compliance with Subsection 13-32a-115(1) by the original victim;]~~

~~[(d) whether retention of the property would create any undue hardship to the original victim; and]~~

~~[(e) compliance by the pawn or secondhand business with the requirements of this chapter, and potential financial loss to the business if the property were returned to the original victim.]]~~

~~[(5) Upon conclusion of the property disposition hearing the court may: (a) order the return of the evidence to the original victim or to the pawn or secondhand business as it determines appropriate; and (b) make an initial finding of restitution for the original victim or the pawn or secondhand business pending resolution of the criminal case.]]~~

~~[(6) The court's determination of possession or restitution under Subsection (5) is a continuing order subject to change or modification until the final resolution of the case.]]~~

Section ~~{9}~~7. Section ~~{13-32a-117}~~13-32a-116.5 is ~~{repealed and reenacted}~~enacted to read:

~~{13-32a-117}~~13-32a-116.5. ~~Contested {disposition}~~Disposition of ~~{articles}~~Articles - Procedure.

(1) ~~{(a)}~~ If a pawn or secondhand business has received notice from a law enforcement agency under Section 13-32a-109 that an article ~~{that is valued at less than \$500 in the pawn or secondhand sale transaction has been or}~~which was the subject of a hold or seizure shall be returned to an identified original victim, the pawn or secondhand business may contest the determination and seek a ~~{remedy under this section by:~~

~~—— (i) returning the article as promptly as is reasonably possible to the identified original victim as directed by the law enforcement agency and at no cost to the original victim;~~

~~—— (ii) giving notice to the}~~specific alternative disposition if within 15 days:

(a) the pawn or secondhand business gives notice to the identified original victim ~~{in person or}~~, by certified mail, that the pawn or secondhand business ~~{is contesting}~~contests the determination to return the article to the original victim; and

~~{(iii)}~~b) {filing} files a ~~{complaint or}~~ petition ~~{in a district court of competent~~

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~~jurisdiction}~~ to determine ~~{proper ownership of the returned article, including any damages incurred by the pawn or secondhand business:~~

~~—— (b) The court shall determine proper ownership of the returned article under this section by a preponderance of the evidence:~~

~~—— (c) The court shall award costs of the action, including reasonable attorney fees, to the prevailing party:~~

~~—— (2) If a pawn or secondhand business has received notice from a law enforcement agency under Section 13-32a-109 that an article that is valued at \$500 or more in the pawn or secondhand sale transaction has been or shall be returned to an identified original victim, the pawn or secondhand business may contest the determination by:~~

~~—— (a) continuing to hold the article pending further determination as provided in this section; and~~

~~—— (b) giving notice to the original victim within 15 days in person or by certified mail that the pawn or secondhand business is contesting the determination that the article is to be returned to the original victim:~~

~~—— (3) (a) If the pawn or secondhand business is unable to reach a resolution with the original victim regarding the article, the pawn or secondhand business may file a complaint or petition with a district court of competent jurisdiction to determine ownership of the article, including any damages:~~

~~—— (b) The court shall determine} **rightful** ownership of the article {under this section by a preponderance of the evidence:~~

~~—— (c) The court shall award costs of the action, including reasonable attorney fees, to the prevailing party:~~

~~—— (4) **as provided in Section 24-3-104.**~~

(2) A pawn or secondhand business is guilty of a **Class B** misdemeanor if the pawn or secondhand business:

(a) holds or sells an article in violation of a notification from a law enforcement agency that the item is to be returned to an original victim; and

(b) **the pawn or secondhand business** does not comply with the requirements of this section within the time periods specified ~~{ in this section}~~.

~~{~~

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Legislative Review Note

Office of Legislative Research and General Counsel